

## **ORD #1017-21**

### **FINDING OF EMERGENCY**

These emergency regulations are necessary for the immediate preservation of the public peace, health and safety or general welfare, within the meaning of Government (GC) Code section 11346.1. Further, GC section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in GC section 11349.6. To determine the OAL five day comment period, check <http://www.oal.ca.gov/> often.

### **DESCRIPTION OF SPECIFIC FACTS WHICH CONSTITUTE THE EMERGENCY**

1. The passage of Assembly Bill (AB) 1217 (Chapter 790, Section 1, Statutes of 2013) created The Home Care Services Consumer Protection Act (the Act) which added a new fully fee-supported licensing program administered by the California Department of Social Services (CDSS). The Act requires licensing and regulation of Home Care Organizations (HCOs), background checks for license applicants and Home Care Aides (HCAs), and maintenance of the Home Care Aide Registry (Registry). Prior to the passage of AB 1217, the Home Care Services industry had not been regulated in California, HCOs were not required to be licensed, and aides were not required to meet any state level mandated minimum qualifications or screenings. However, as the state's population continues to age, the demand for this program will continue to increase and the need for the health and safety measures for this population in these emergency regulations is crucial. AB 855 (Chapter 29, Section 62, Statutes of 2014) amended Section 1796.63(c) of the Health and Safety Code to give CDSS the authority to adopt emergency regulations to implement and administer the provisions of the Act. This amendment provides the department with the authority to adopt emergency regulations to implement and administer the provisions of this chapter. The department may readopt any emergency regulations that are the same as, or substantially equivalent to, any emergency regulations previously adopted. The initial adoption and re-adoption of emergency regulations for the implementation and administration of this chapter pursuant to this subdivision shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. The initial and readopted emergency regulations shall be exempt from review by the Office of Administrative Law. The initial and readopted emergency regulations shall be submitted to the Office of Administrative Law for filing with the Secretary of State and each adoption or re-adoption shall remain in effect for no more than 180 days.

2. With implementation, CDSS had authority to operate via written directives; however, to ensure the continued protection of California's elderly and disabled needing home care services, these emergency regulations would provide standards for the responsibilities of HCOs and the requirements of HCAs.
3. These emergency regulations will ensure that the home care services industry has a clear understanding of the responsibilities of applying for HCO licensure, operating requirements, and requirements for biennial visits. Additionally, these regulations provide guidelines and standards for HCAs who are affiliated to HCOs or who choose to apply independently.
4. These emergency regulations ensure CDSS aides and protects the health and safety of vulnerable individuals by regulating a previously unregulated industry.
5. A delay in implementation of these regulations will cause delays in the full program implementation, as well as unforeseen consequences to California's disabled and elderly who rely on organizations and aides to provide home care services.
6. Delays in the implementation of the health and safety requirements would put CDSS at risk of legal action.
7. Failure to implement these regulations would jeopardize the health and safety of disabled and elderly clients relying on home care services.
8. Therefore, to protect the health and safety of clients needing home care services, these regulations are adopted on an emergency basis to be effective January 1, 2018.
9. As permitted in Section 63 of AB 855, the department is readopting the original emergency regulations to allow additional time to complete the regulatory process. Due to the volume of adopting this new program, Home Care Services Consumer Protection, the scope size, and the substantial impacts to the licensing entities and clients, additional time is necessary to complete the regulatory process.

## **INFORMATIVE DIGEST**

According to the U.S. Census Bureau's American Community Survey, in 2014, 36 percent of persons 65 and over reported some type of disability (i.e., difficulty in hearing, vision, cognition, ambulation, self-care, or independent living). Some of these disabilities may require assistance to meet important activities of daily living (ADLs). In 2013, 42 percent of home or community-resident persons 65 or older reported difficulty in performing one or more ADLs. According to AARP, nearly 90 percent of persons 65 years or older indicate they want to stay in their home as long as possible. The aging in place movement is likely to grow alongside the aging of the population,

and many of these homes will require home care services to help individuals stay in their home.

To assist with the growing population of persons 65 years or older and the aging in place movement, in January 2016, California implemented the Home Care Services Consumer Protection Act which requires licensing and regulation of HCOs, background checks for license applicants and HCAs, and maintenance of the Registry. Prior to implementation, HCOs were not required to be licensed and HCAs were not required to meet any state level mandated minimum qualifications or screenings. Of the HCOs that chose to conduct background checks, training, or other screenings for their caregivers, there was no requirement to use a uniform process and not all of them applied the same standards. As part of the licensing and registration responsibilities, CDSS conducts biennial visits to all licensed HCOs, and processes background checks on all HCO applicants, HCO employees who have access to clients or confidential client information, and HCAs affiliated to HCOs as well as independent HCAs who submit applications. CDSS also maintains a public web-based registry of all HCAs who have applied, which allows consumers to verify a HCA's registration status by entering an individual's name and identification number. Additionally, unlike other licensure categories, HCOs must renew their licenses and HCAs must renew their registrations every two years.

Through the implementation of the program, CDSS has released five different versions of written directives. Each version amended to make the requirements and standards more clear for the home care services industry. As the program has been operating via written directives since implementation, it is the intent to put these directives into regulation.

The regulations will provide significant health and safety protections for a vulnerable population by requiring HCAs to be background-checked and, if they are employed by a HCO, require tuberculosis screening and training.

The following forms are incorporated by reference. The forms are not printed in the California Code of Regulations because it would be cumbersome and impractical; however, the forms are listed below and readily available from CDSS at the three following links:

Link to HCS Forms: <http://www.cdss.ca.gov/inforesources/Forms-Brochures/Forms-Alphabetic-List/E-H>

Link to LIC Forms: <http://www.cdss.ca.gov/inforesources/Forms-Brochures/Forms-Alphabetic-List/I-L>

Link to SOC Forms: <http://www.cdss.ca.gov/inforesources/Forms-Brochures/Forms-Alphabetic-List/Q-T>:

HCS 001 (12/15) – Home Care Organization Suboffice Request  
HCS 101 (10/17) – Home Care Aide Registration Renewal  
HCS 100 (12/15) – Application for Home Care Aide Registration

HCS 200 (08/15) – Application for Home Care Organization License  
HCS 215 (08/15) – Home Care Organization Licensee Applicant Information  
HCS 308 (08/15) – Designation of Home Care Organization Responsibility  
HCS 309 (08/15) – Partnership/Corporation/Limited Liability Company Organization Structure  
HCS 402 (12/15) – Home Care Organization Dishonesty Bond  
HCS 501 (06/17) – Personnel Record  
HCS 9165 (08/15) – Board of Director Statement  
LIC 301E (07/03) – Reference Request  
LIC 500 (11/2003) – Personnel Report  
LIC 508 (07/15) – Criminal Record Statement  
LIC 9163 (12/15) – Request for Live Scan Service-Community Care Licensing  
LIC 9188 (11/15) – Criminal Record Exemption Transfer Request  
SOC 341 A (03/15) – Statement Acknowledging Requirements to Report Suspected Abuse of Dependent Adults and Elders

These regulations were noticed to the public for a 45-day comment period from March 9, 2018, through April 23, 2018. Written and oral comments were received during this comment period and will formally be responded to and provided to the public for a 15-day renote comment period that will be accordance with Government Code Section 11346.8(c) and California Code of Regulations Title 1, Section 44.

## **COST ESTIMATE**

As The Home Care Consumer Protection Act is a new program, the economic impact is yet to be determined; however, the following information is known to CDSS:

1. Costs or Savings to State Agencies: To support the Home Care Services Program, expenditure authority was included in the Budget Acts of the following respective years; \$1,472,000 for fiscal year (FY) 2014-15, \$5,466,000,000 for FY 2015-16, \$5,584,000 for FY 2016-17 and \$6,583,000 for FY 2017-18. At this point, expenditures for the program are expected to be \$6,353,000 for FY 2018-19 and ongoing.
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance with Government Code Sections 17500 - 17630: None
3. Nondiscretionary Costs or Savings to Local Agencies: None
4. Federal Funding to State Agencies: None

## **LOCAL MANDATE STATEMENT**

These emergency regulations do not impose a mandate on local agencies or school districts. There are no state-mandated local costs in this order that require reimbursement under the laws of California.

## **AUTHORITY AND REFERENCE CITATIONS**

The CDSS adopts these regulations under the authority granted in Sections 1522, 1558, 1796.23, 1796.24, 1796.26, 1796.29, 1796.31, 1796.33, 1796.35, 1796.36, 1796.37, 1796.38, 1796.40, 1796.42, 1796.43, 1796.44, 1796.48, 1796.49, 1796.55, and 1796.63 of the Health and Safety (H&S) Code. Subject regulations implement and make specific Sections 1796.12, 1796.19, 1796.21, 1796.22, 1796.23, 1796.24, 1796.25, 1796.26, 1796.28, 1796.29, 1796.31, 1796.32, 1796.33, 1796.35, 1796.36, 1796.37, 1796.38, 1796.40, 1796.41, 1796.42, 1796.44, 1796.45, 1796.47, 1796.48, 1796.49, 1796.51, 1796.52, 1796.53, 1796.55, and 1796.63 of the H&S Code.